Murugapillai a/l Rengasamy v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO N-05–22 OF 2008
ZALEHA ZAHARI, KN SEGARA AND MOHD HISHAMUDIN JJCA
22 MARCH 2010

Criminal Law — Defence — Intoxication — Burden and standard of proof — Whether defence raised as mere afterthought

Criminal Law — Murder — Defence — Whether accused under reasonable apprehension of danger of death or grievous hurt

Criminal Law — Penal Code — s 302 — Murder — Appeal against conviction and sentence — Whether learned judge properly appraised direct and circumstantial evidence — Whether corroboration of testimony of single witness necessary — Whether information leading to discovery of fact properly admitted — Whether defence of intoxication and self-defence rightly rejected — Whether prosecution case established beyond reasonable doubt — Evidence Act 1950 s 27

Evidence — Information leading to fact discovered — Admissibility of statement — Whether discovery as consequence of information — Whether information related distinctly to object recovered — Information given by murder accused leading to recovery of murder weapon — Whether information admissible — Evidence Act 1950 s 27

The accused was charged with an offence under s 302 of the Penal Code ('Code') for the murder of one Ramakrishnan. One Jayaraman ('PW9'), testified that he saw the appellant slashing the deceased with a *parang* on the head and stomach. The learned trial judge accepted PW9's testimony notwithstanding PW9's admission he had consumed liquor earlier on that night. In the learned judge's assessment, PW9 was a credible witness. The learned trial judge also held on the evidence adduced that there existed strong circumstantial evidence corroborating the direct evidence of the appellant's involvement. The learned judge accepted that evidence of two witnesses, namely, Ammakanu ('PW7') and Ana Raja ('PW8'). PW7 had testified that the appellant had handed her a *parang* that night in question. PW7 stated that after washing the *parang* which the appellant had given her, she had handed it to PW8. PW8 testified to have having thrown the *parang* which PW7 had given him to the top of a garage. The learned judge's finding was that PW7 and PW8

were credible witnesses. The learned judge ruled that the information given by the appellant which had led Chief Inspector Md Zin ('PW6') to meeting firstly PW7, then PW8, and thereafter, to the recovery of a *parang* was admissible under s 27 of the Evidence Act 1950 ('Act'). He held that the recovery of the *parang* consequential upon the receipt of the information given by the appellant to PW6 of having handed to PW7 a *parang*, fortified the appellant's involvement in the incident where the deceased sustained the injuries, arising from which he died. The inference which the learned judge drew from the injuries sustained by the deceased was that the appellant clearly had the intention to cause death under s 300(a) of the Code; or had the intention to cause bodily injury to the deceased knowing that such injury would cause death under s 300(b) of the Code. Three defences were advanced by the appellant, namely, denial in having caused the injuries to the deceased, intoxication, and that of self defence. The learned judge concluded that the appellant had failed to raise a reasonable doubt against the prosecution's case, and that the prosecution had proved their case beyond reasonable doubt. The appellant was found guilty and was accordingly sentenced to death. Hence, this appeal.

Held, dismissing the appeal:

(1) The learned judge had accepted PW9's evidence and had rejected the appellant's denial. A trial judge who has had the advantage of observing the demeanour of witnesses is in a better position than an appellate court to assess probative value of the evidence. Findings of fact by a trial judge will not be disturbed by an appellate court unless there is insufficient judicial appreciation of the evidence (see para 20).

(2) Whether corroboration of the testimony of a single witness is necessary must depend upon the facts and circumstances of each case and no general rule can be laid down. Much depends upon the judicial discretion of the trial judge. As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. The maxim, 'evidence has to be weighed and not counted' applies; *Balachandran v Public Prosecutor* [2005] 2 MLJ 301; [2005] 1 CLJ 85 (FC) and *Aziz Muhamad Din v Public Prosecutor* [1996] 5 MLJ 473; [1997] 1 CLJ Supp 523 (HC) referred (see para 21).

(3) The learned judge was right in accepting the evidence given by two key witnesses namely, PW7 and PW8 as strong circumstantial evidence of the appellant's involvement. The evidence of PW7 receiving a parang from the appellant that night was clearly incriminating. The conduct of the appellant in leaving the place where the incident took place, and after the incident, surrendering of himself at the police station the following day was material and significant (see para 22).

(4) For s 27 of the Act to apply, the information must be such that it led to the discovery of a fact. The fact of discovery must be the consequence,

and the information the cause of the recovery. The information leading to the discovery must relate distinctly to the object so recovered and nothing more. The information given by the appellant had led the police to meeting PW7 and PW8, and to the premises where the parang was recovered. The learned judge had rightly admitted the information given by the appellant to PW6 under s 27 of the Act (see paras 23–24).

(5) It was incumbent upon the appellant to prove the defence of intoxication on a balance of probabilities. The reasoning of the learned judge in rejecting the defence of intoxication was sound. In any event, the defences of denial and intoxication were never put across to the prosecution's witnesses during their cross-examination. All serious allegations should have been put in cross-examination. The defences raised appeared to be afterthoughts (see para 26).

(6) To succeed on the defence of self defence, there must be evidence that the appellant was under a belief and had a reasonable apprehension of being in danger of death or grievous hurt by his assailant. The defence of self defence was rightly rejected by the trial learned judge (see para 27).

(7) The learned judge had properly evaluated and appraised the evidence, both direct and circumstantial. The evidence was strong warranting a conviction under s 302 of the Penal Code. The prosecution had proved their case against the appellant beyond reasonable doubt (see para 28).

[Bahasa Malaysia summary

Tertuduh telah dituduh kerana kesalahan di bawah s 302 Kanun Keseksaan ('Kanun') kerana membunuh Ramakrishnan. Jayaraman ('PW9'), telah memberi keterangan bahawa dia telah melihat perayu mengelar si mati dengan parang di kepala dan perut. Hakim perbicaraan yang bijaksana telah menerima testimoni PW9 meskipun PW9 mengaku bahawa dia telah minum arak sebelum kejadian malam itu. Dalam penilaian hakim bijaksana, PW9 adalah saksi yang boleh dipercayai. Hakim perbicaraan yang bijaksana juga telah memutuskan berdasarkan keterangan yang dikemukakan bahawa terdapat keterangan mengikut keadaan yang menyokong keterangan langsung penglibatan perayu. Hakim yang bijaksana menerima keterangan dua saksi, iaitu Ammakanu ('PW7') dan Ana Raja ('PW8'). PW7 telah memberi keterangan bahawa perayu telah memberikannya parang pada malam yang dipersoalkan itu. PW7 menyatakan bahawa selepas parang yang mana telah diberikan kepadanya oleh perayu, dia telah menyerahkannya kepada PW8. PW8 memberi keterangan yang dia telah membuang parang yang diberikan kepadanya oleh PW7 ke atas bumbung garaj. Penemuan hakim yang bijaksana adalah PW7 dan PW8 merupakan saksi-saksi yang boleh dipercayai. Hakim yang bijaksana memutuskan bahawa maklumat yang diberikan oleh perayu yang membawa kepada Cif Inspektor Md Zin ('PW6') menemui PW7 dahulu, dan kemudian PW8, dan berikutan itu, kepada penemuan parang itu boleh

diterima di bawah s 27 Akta Keterangan 1950 ('Akta'). Beliau memutuskan bahawa penemuan parang itu berdasarkan maklumat yang diberikan oleh perayu kepada PW6 yang mana dia telah memberikan PW7 parang itu, mengesahkan penglibatan perayu dalam kejadian itu di mana si mati telah mengalami kecederaan, yang telah mengakibatkan kematiannya. Inferens yang dapat dibuat oleh hakim bijaksana berdasarkan kecederaan yang dialami oleh si mati adalah bahawa perayu jelas mempunyai niat untuk menyebabkan kematian di bawah s 300(a) Kanun; atau mempunyai niat untuk menyebabkan kecederaan badan ke atas si mati dengan mengetahui bahawa kecederaan sedemikian akan menyebabkan kematian di bawah s 300(b) Kanun. Tiga pembelaan telah dikemukakan oleh perayu, iaitu, penafian telah menyebabkan kecederaan kepada si mati, mabuk, dan mempertahankan diri. Hakim bijaksana memutuskan bahawa perayu telah gagal menimbulkan keraguan munasabah terhadap kes pendakwaan, dan bahawa pendakwaan telah berjaya membuktikan kes mereka melampaui keraguan munasabah. Perayu didapati bersalah dan sewajarnya dijatuhkan hukuman mati. Justeru itu, rayuan ini telah dikemukakan.

Diputuskan, menolak rayuan:

(1) Hakim bijaksana telah menerima keterangan PW9 dan menolak penafian perayu. Hakim perbicaraan yang mempunyai kelebihan untuk meneliti tingkah laku saksi-saksi berada dalam kedudukan lebih baik daripada mahkamah rayuan untuk menilai apa yang dapat menjadi bukti dengan nilai keterangan. Penemuan fakta oleh hakim perbicaraan tidak diganggu oleh mahkamah rayuan kecuali jika keterangan tidak mendapat penilaian kehakiman yang mencukupi (lihat perenggan 20).

(2) Sama ada sokongan bagi keterangan seseorang saksi adalah perlu, bergantung kepada fakta dan keadaan setiap kes dan tiada rukun am boleh ditetapkan. Ia banyak bergantung kepada budi bicara kehakiman hakim perbicaraan. Sebagai rukun am, mahkamah dapat dan boleh bertindak berdasarkan testimoni seorang saksi meskipun tidak disokong. Maxim 'evidence has to be weighed and not counted' adalah terpakai; (lihat perenggan) *Balachandran v Public Prosecutor* [2005] 2 MLJ 301; [2005] 1 CLJ 85 (FC) dan *Aziz Muhamad Din v Public Prosecutor* [1996] 5 MLJ 473; [1997] 1 CLJ Supp 523 (HC) dirujuk (lihat perenggan 21).

(3) Hakim bijaksana adalah betul untuk menerima keterangan yang diberikan oleh dua saksi utama, iaitu PW7 dan PW8 kerana keterangan mengikut keadaan berhubung penglibatan perayu adalah kukuh. Keterangan PW7 menerima parang daripada perayu pada malam tersebut jelas membuktikan kesalahan. Perbuatan perayu meninggalkan tempat di mana kejadian berlaku, dan selepas kejadian, menyerah dirinya di balai polis pada hari berikutnya adalah material dan signifikan (lihat perenggan 22).

(4) Seksyen 27 Akta untuk terpakai, maklumat hendaklah membawa kepada penemuan fakta. Fakta penemuan hendaklah menjadi akibatnya, dan maklumat sebab penemuan. Maklumat yang membawa kepada penemuan hendaklah berkaitan jelas dengan objek yang ditemui dan tidak lebih daripada itu. Maklumat yang diberikan oleh perayu telah membawa polis berjumpa PW7 dan PW8, dan ke premis di mana parang itu ditemui. Hakim bijaksana adalah betul untuk menerima maklumat yang diberikan oleh perayu kepada PW6 di bawah s 27 Akta (lihat perenggan 23–24).

(5) Adalah penting untuk perayu membuktikan pembelaan mabuk atas imbangan kebarangkalian. Alasan hakim bijaksana menolak pembelaan mabuk adalah kukuh. Dalam apa keadaan, pembelaan penafian dan mabuk tidak dikemukakan kepada saksi-saksi pendakwaan semasa pemeriksaan balas mereka. Semua dakwaan serius patut dikemukakan semasa pemeriksaan balas. Pembelaan-pembelaan yang dibangkitkan dilihat seperti suatu yang telah difikirkan kemudian (lihat perenggan 26).

(6) Suatu pembelaan mempertahankan diri untuk berjaya perlu ada keterangan bahawa perayu mempercayai dan mempunyai kebimbangan munasabah berada dalam bahaya mati atau cedera serius oleh penyerangnya. Pembelaan mempertahankan diri wajar ditolak oleh hakim perbicaraan yang bijaksana di sini (lihat perenggan 27).

(7) Hakim bijaksana telah membuat penilaian keterangan sewajarnya, secara langsung dan mengikut keadaan. Keterangan jelas mewajarkan sabitan di bawah s 302 Kanun Keseksaan. Pendakwaan telah membuktikan kes mereka adalah melampaui keraguan munasabah terhadap perayu (lihat perenggan 28).]

Notes

For a case on admissibility of statement, see 7(1) *Mallal's Digest* (4th Ed, 2011 Reissue) para 2075.

For cases on defence generally, see 4 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 810–813.

For cases on defence on murder, see 4 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1355–1369.

For cases on s 302 of the Penal Code, see 4 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1698–1776.

Cases referred to

Aladin v PP [1964] MLJ 345, FC (refd)

Aziz Muhamad Din v PP [1996] 5 MLJ 473; [1997] 1 CLJ Supp 523, HC (refd)

Balachandran v PP [2005] 2 MLJ 301; [2005] 1 CLJ 85, FC (refd)

Lee Wong Tiang v PP [1972] 1 MLJ 50, FC (refd)

Sum Kum Seng v PP [1981] 1 MLJ 244, FC (refd)

Legislation referred to

Evidence Act 1950 ss 27, 134
Penal Code ss 85(2)(b), 100, 300(a), (b), (c),(d), 302

Sukhaimi bin Mashud (Teh Poh Teik) for the appellant.
Awg Armadajaya b Awg Mahmud (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Zaleha Zahari JCA (delivering judgment of the court):

[1] This is an appeal against the decision of the learned High Court judge of Seremban dated 11 January 2008 convicting the appellant for an offence under s 302 of the Penal Code and imposing the sentence of death upon him. We dismissed the appeal for the following reasons.

[2] The charge preferred against the appellant reads as follows:

> Bahawa kamu pada 19.7.2002, jam lebih kurang jam 8.00 malam, di Sebelah Kiri Jalan No. 2, Kawasan Perumahan Pekerja Ladang Air Hitam, Jempol, di dalam Daerah Jempol, di dalam Negeri, Negeri Sembilan telah melakukan pembunuhan ke atas RAMAKRISHNAN A/L NADESAN, KP NO. A 2224044, dengan itu kamu telah melakukan suatu kesalahan yang boleh di hukum dibawah seksyen 302 Kanun Keseksaan.

[3] The prosecution's case rests on both direct and circumstantial evidence. Learned counsel for the appellant in his submission contended that there was a lack of judicial appreciation by the learned judge of the evidence for the defence and that of the prosecution.

FINDINGS OF THE HIGH COURT JUDGE

[4] Based on the evidence before him the learned trial judge's findings are as follows.

[5] The fact that Ramakrishnan a/l Nadesan, the person named in the charge ('the deceased'), was dead was not disputed. Dr Hjh Sharifah Safoorah bt Syed Alwee Al'aidrus ('PW5'), the person who conducted the post mortem on the deceased, in her report described in detail the injuries sustained by the deceased arising from which he died. PW5 stated the cause of death of the deceased to be, 'incise wound on the head'.

[6] The direct evidence which the learned judge accepted was that given by Jayaraman a/l Balakrishnan ('PW9'). PW9 was an eye witness as to how the deceased sustained the injuries described in detail by PW5. PW9 had testified that he saw the appellant slashing the deceased with a *parang* on the head and stomach. The learned trial judge accepted PW9's testimony notwithstanding PW9's admission he had consumed liquor earlier on that night on the following grounds. As PW9 was related to the appellant, there was no reason for PW9 to victimise the appellant by lying. He accepted PW9's testimony that he did not lose his self control and was aware of what was then happening around him on the night in question. PW9 had testified that although it was dark visibility was good. This part of PW9's evidence was supported by the evidence of ASP Makhetar bin Yaacob ('PW10'), the investigating officer in this case, who confirmed that the weather was good and the area was lighted by a street light. In the learned judge's assessment, PW9 was a credible witness. He then made a finding of fact that the appellant was the person who caused the injuries sustained by the deceased arising from which the deceased died.

[7] The learned trial judge also held on the evidence adduced that there exists strong circumstantial evidence corroborating the direct evidence of the appellant's involvement. The learned judge accepted that evidence of two witnesses, namely, Ammakanu a/p Munisamy (PW7) and Ana Raja a/l Arnakili (PW8). PW7 had testified that the appellant had handed her a *parang* that night in question. PW7 stated that after washing the *parang* which the appellant had given her, she had handed it to PW8. The learned judge also accepted PW8's evidence of having thrown the *parang* which PW7 had given him to the top of a garage of premises No C5. The learned judge's finding was that PW7 and PW8 were credible witnesses. He noted that PW7 and PW8's evidence had not been challenged in cross-examination by the defence.

[8] On the facts of this case there was also the admission by the learned trial judge of the evidence given by Chief Inspector Md Zin bin Kasran (PW6) pursuant to s 27 of the Evidence Act 1950. PW6 had testified to having recorded the following information given by the appellant in his police report ('exh P17') '... suspek telah memberitahu saya *parang* yang telah diserahkan kepada emak saudaranya nama Ammakanu a/p Munisamy yang tinggal di Ladang Air Hitam …'. Although this information was not the exact words related by the appellant, the learned judge held that it was still admissible under s 27 (see *Sum Kum Seng v Public Prosecutor* [1981] 1 MLJ 244 (FC)).

[9] The learned judge ruled that the information given by the appellant which had led PW6 to meeting firstly PW7, then PW8, and thereafter, to the recovery of a *parang* ('exh P14') was admissible under s 27 of the Evidence Act 1950. He further held that the recovery of the *parang* P14 consequential upon the receipt of the information given by the appellant to PW6 of having handed

to PW7 a *parang*, fortified the appellant's involvement in the incident where the deceased sustained the injuries, arising from which he died.

[10] On the issue as to whether the appellant had acted with the intention or with knowledge that could fall under any one of limbs (a), (b), (c) and (d) of s 300 of the Penal Code, the learned judge's findings are as follows. Intention could be inferred from the nature of the injuries sustained by the deceased. PW5's report shows that the deceased sustained not less than four serious injuries on the head, chest and hand. The injuries at the head involved 'meninges' and 'left frontal lobe' at the brain. The serious injury at the chest caused two of the bones to be broken. The inference which the learned judge drew from the injuries sustained by the deceased was that the appellant clearly had the intention to cause death under limb (a) of s 300; or had the intention to cause bodily injury to the deceased knowing that such injury would cause death under limb (b) of the same section.

[11] Based on these findings of fact the learned judge held that the prosecution had, at the end of the prosecution's case, proved a prima facie case against the appellant under 302 of the Penal Code; and he called upon the appellant to enter his defence.

THE DEFENCE

[12] In respect of the three defences advanced by the appellant, namely, denial in having caused the injuries to the deceased, intoxication, and that of self defence, the learned judge's findings are these.

[13] He rejected the appellant's denial of non involvement for the following reasons: the fact that the appellant did not deny being present at the scene and was a witness to PW9 being involved in a fight with the deceased; the appellant's admission that he went home to take a *parang* upon seeing a person by the name of Muniandy holding an axe; and the fact that the appellant returned to the scene with a *parang* where the fight between PW9 and the deceased was still ongoing.

[14] Upon assessing the credibility of the two witnesses and deciding whose evidence to accept, whether that of PW9 or the appellant, the learned judge accepted the evidence of PW9 who had testified to seeing the appellant attacking the deceased and rejected the appellant's denial. The appellant's denial of having given the *parang* to PW7 that night in question was also rejected after having accepted the evidence given by PW7 as mentioned earlier on in this judgment. The fact that the appellant had handed over to PW7 a

parang soon after the incident was considered as incriminating. The fact that PW8 subsequently threw the *parang* which he received from PW7 and the fact that PW6 subsequently recovered the *parang* P14 at the place shown by PW8 was clearly strong circumstantial evidence implicating the appellant.

[15] On the defence of intoxication, the burden of proof of which lies upon the appellant, the learned trial judge noted that there was no evidence as to the amount of liquor the appellant had consumed between 5pm–7pm that day. No expert evidence was produced as to the effect of the consumption of the amount liquor by the appellant on that day in question. This defence was accordingly not established.

[16] In ascertaining what was the state of mind of the appellant at the material point of time, the learned trial judge took into consideration the appellant's conduct prior and subsequent to the incident. The appellant himself had testified that although he had consumed the alcohol, he was able to find his way home. Upon arriving home, he was able to identify the persons who were then present, including the deceased and PW9. The appellant was able to recall in detail the fight that took place between the deceased and PW9. The appellant's testimony of the persons involved in the fight falling on to the ground was confirmed by PW9. These evidence prove that the appellant knew what was then happening around him. The appellant considered it necessary for him to go home upon seeing Muniandy armed with an axe and then to return to the scene armed with a *parang*.

[17] The learned judge was of the view that the appellant's conduct subsequent to the incident was not consistent with the reaction of a person in a state of intoxication. The appellant had testified that after the fight he wanted to go to the police station to lodge a police report. This shows that the appellant knew what had transpired was wrong. Likewise, the act of giving the *parang* to PW7. These actions were inconsistent with the conduct of one who was in a state of intoxication to the level specified in s 85(2)(b) of the Penal Code.

[18] Finally, on the defence of self defence, the burden lies on the appellant to prove on a balance of probabilities that he acted in self defence. The appellant's case was that he took a *parang* to defend himself when he saw Muniandy returning to the scene of the incident with an axe. Whether or not such apprehension existed on the part of the appellant is one of fact. There was however no evidence to show the appellant being in a state of danger of the deceased injuring him. The victim in this case is the deceased, not Muniandy. There was no evidence whatsoever to show there was a fight between the appellant and the deceased. In fact the evidence shows that the deceased was on the ground wrestling with PW9 when the appellant attacked the deceased.

There was no evidence indicating the deceased being armed with a weapon when the appellant attacked him in the manner which he did. In the circumstances, the defence of self defence was also rejected by the learned trial judge.

[19] The learned judge then concluded that the appellant had failed to raise a reasonable doubt against the prosecution's case, and the prosecution had proved their case beyond reasonable doubt. The appellant was therefore found guilty of the offence charged; and he was accordingly sentenced to death.

DECISION

[20] The learned judge had accepted the evidence given PW9, the witness who saw the appellant slashing the deceased, and had rejected the appellant's denial of having done so. It is well established that a trial judge who has had the advantage of observing the demeanour of witnesses is in a better position than an appellate court to assess probative the value of the evidence. It is also trite law that findings of fact by a trial judge will not be disturbed by an appellate court unless there has been insufficient judicial appreciation of the evidence.

[21] Whether corroboration of the testimony of a single witness is necessary must depend upon the facts and circumstances of each case and no general rule can be laid down. Much depends upon the judicial discretion of the trial judge. As a general rule, a court can and may act on the testimony of a single witness though uncorroborated (see s 134 of the Evidence Act 1950; *Balachandran v Public Prosecutor* [2005] 2 MLJ 301; [2005] 1 CLJ 85 (FC); *Aziz Muhamad Din v Public Prosecutor* [1996] 5 MLJ 473; [1997] 1 CLJ Supp 523 (HC)). The maxim, 'evidence has to be weighed and not counted' applies.

[22] We are of the view that the learned judge was clearly right in accepting the evidence given by two key witnesses namely, PW7 and PW8 as strong circumstantial evidence of the appellant's involvement. The evidence of PW7 receiving a *parang* from the appellant that night was clearly incriminating. The conduct of the appellant in leaving the place where the incident took place, and after the incident, surrendering of himself at the police station the following day was certainly material and significant.

[23] For s 27 of the Evidence Act 1950 to apply, the information must be such that it led to the discovery of a fact. The fact of discovery must be the consequence, and the information the cause of the recovery. The information leading to the discovery must relate distinctly to the object so recovered and nothing more.

[24] On the facts of this case, pursuant to the information given by the appellant of having handed over a *parang* to PW7 had led the police to meeting PW7 and PW8, and to the premises where the *parang* P14 was recovered. The learned judge had admitted the information given by the appellant to PW6 under s 27 of the Evidence Act 1950 leading to the discovery of the *parang*. We are of the view that he was right in doing so.

[25] The learned judge was therefore right, based on the evidence before him, in finding that the prosecution had proved a prima facie case against the appellant; and in calling upon him to enter his defence.

[26] It was incumbent upon the appellant to prove the defence of intoxication on a balance of probabilities (see *Aladin v Public Prosecutor* [1964] MLJ 345 (FC) and *Lee Wong Tiang v Public Prosecutor* [1972] 1 MLJ 50 (FC)). In our considered opinion the reasoning of the learned judge in rejecting the defence of intoxication is sound. In any event, the defences of denial and intoxication were never put across to the prosecution's witnesses during their cross-examination. The principle on this point is clear. All serious allegations should have been put in cross-examination. These defences raised appear to be afterthoughts.

[27] To succeed on the defence of self defence, there must be evidence that the appellant was under a belief and had a reasonable apprehension of being in danger of death or grievous hurt by his assailant (s 100 of the Penal Code). The defence of self defence was rightly rejected by the trial learned judge for the reasons explained in his judgment.

[28] To conclude, we find the learned judge had properly evaluated and appraised the evidence, both direct and circumstantial, adduced by the prosecution, as well as that of the defence. The evidence before the judge was strong warranting a conviction under s 302 of the Penal Code. The prosecution had proved their case against the appellant beyond reasonable doubt.

[29] The appeal was accordingly dismissed and the decision of the High Court judge affirmed.

Appeal dismissed.

Reported by Kanesh Sundrum